



## Legal Update

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March 2019

***The SJC affirms Michelle Carter's conviction for Involuntary Manslaughter and holds that the text messages in this case provided sufficient evidence for a conviction of Manslaughter and they were not protected under the First Amendment.***

***Commonwealth v. Michelle Carter***, 481 Mass. 352 (2019): Police found the victim, Conrad Roy, deceased in his truck. Roy had died after inhaling carbon monoxide while his truck was parked in Fairhaven parking lot. During their investigation, police learned that the defendant, Michelle Carter, met Roy in 2012. Although they did not live in the same town, they contacted each other through text messages and phone calls. The majority of the text messages focused on Roy's suicidal thoughts. Between October 2012 and July 2014, Roy had unsuccessfully tried to commit suicide through various methods. Carter initially urged Roy to seek professional help. However, Carter began to help Roy with methods of how, where, and when he could do so, and she even downplayed his fears about how his suicide would affect his family. The text message revealed that Carter encouraged Roy to kill himself and chastised him when he did not.

Carter was indicted as a Youthful Offender and charged with Involuntary Manslaughter. During a bench trial, the Juvenile Court judge found that Carter's actions constituted wanton or reckless conduct and serious disregard for the victim's well-being. Significantly, cell phone records indicated that Carter was communicating with Roy

while he was in his truck committing suicide. Carter admitted that she had stayed on the phone for “20 minutes,” and heard him moaning. Later, Carter texted a friend and said “I think he just killed himself.” Carter sent messages claiming that she could have stopped Roy, but instead told him to get back in the truck.

The judge emphasized that Carter commanded him get back into the truck, “knowing the victim's fears, doubts, and fragile mental state.” Carter also acknowledged that she could hear Roy coughing and moaning when he reentered the truck. Carter did not call emergency personnel, nor contact Roy’s family, nor instruct him to get out of the truck. Roy died from carbon monoxide poisoning and the judge found that Carter’s actions and her failure to act constituted, “each and all,” wanton and reckless conduct that caused the victim's death.

Prior to trial, Carter filed a motion to dismiss the indictment. After the Juvenile Court judge denied the motion, the SJC found that there was sufficient evidence to support Carter’s indictment for involuntary manslaughter. Although Carter was not physically present when Roy committed suicide, her words constituted wanton or reckless conduct sufficient to support a charge of manslaughter. *Carter I*, 474 Mass. at 632-633. Verbal conduct in appropriate circumstances can “overcome a person's willpower to live, and therefore be the cause of a suicide.” *Id.* at 633. There was ample evidence to establish probable cause that the defendant’s conduct was wanton or reckless under either a subjective or objective standard. Furthermore, the SJC emphasized that “an ordinary person under the circumstances would have realized the gravity of the danger posed by telling the victim, who was mentally fragile, predisposed to suicidal inclinations, and in the process of killing himself, to get back in a truck filling with carbon monoxide.” *Carter I*, *supra* at 635. Since Carter was Roy’s girlfriend, it is reasonable to infer that she had some control over his actions. All these issues were addressed during the initial appeal in *Carter I*.

The issues the SJC examined in this appeal are whether the evidence at trial was sufficient to support her conviction beyond a reasonable doubt and whether Carter’s actions were covered or protected under the First Amendment.

### **1<sup>st</sup> Issue: Was there sufficient evidence to support a conviction of Involuntary Manslaughter?**

The SJC found there was sufficient evidence to support a conviction of Involuntary Manslaughter and that Carter’s words contained in text messages were corroborated. Carter argued that without any physical act on her part, including her physical presence at the scene, her words alone were insufficient to support a charge of Manslaughter. *Carter*

*I, supra* at 632-633. Verbal conduct in appropriate circumstances could “overcome a person's willpower to live, and therefore be the cause of a suicide.” *Id.* at 633. The SJC disagreed and found that “there was ample evidence to establish probable cause that the defendant's conduct was wanton or reckless under either a subjective or objective standard.” *Commonwealth v. Pugh*, 462 Mass. 482, 496-497, 969 (2012) (wanton or reckless conduct may be “determined based either on the defendant's specific knowledge or on what a reasonable person should have known in the circumstances”). “An ordinary person under the circumstances would have realized the gravity of the danger posed by telling the victim, who was mentally fragile, predisposed to suicidal inclinations, and in the process of killing himself, to get back in a truck filling with carbon monoxide.” *Carter I, supra* at 635. Additionally, Carter was Roy’s girlfriend, “with whom he was in constant and perpetual contact — on a subjective basis knew that she had some control over his actions.”

Next, the SJC found that Carter’s statements were critical and were corroborated by Roy’s actions. Carter ordered Roy to get back into the truck after he stepped out to get some fresh air. Although Carter claimed her statement to Roy was uncorroborated, the evidence proved otherwise. Here, Carter’s statement was more than adequately corroborated not only by the Roy’s death, but also by text messages exchanged with the victim encouraging him to commit suicide, and by the fact that the defendant and the victim were in voice contact while the suicide was in progress — that is, despite the physical distance between them, the defendant was able to communicate with the victim, hear what was going on in the truck, and give him instructions.

Carter also argued that the judge failed to properly apply the legal principles set forth in *Carter I*. For example, the record indicates that the judge's remarks explaining the guilty verdict contained no express finding that her words had a “coercive quality” that caused the victim to follow through with his suicide. See *Carter I*, 474 Mass. at 634. However, the judge stated in his remarks that they were not intended as a comprehensive statement of all the facts he found or of all his legal rulings. Finally, and perhaps most importantly, the judge expressly tracked the elements of manslaughter in his findings. He found: “She instructs Roy to get back into the truck, well knowing of all of the feelings that he has exchanged with her — his ambiguities, his fears, his concerns.” This, the judge found, constituted “wanton and reckless conduct by Carter, creating a situation where there is a high degree of likelihood that substantial harm would result to [the victim].” The judge then further found that this conduct caused the victim's death beyond a reasonable doubt. His finding of causation in this context, at that precise moment in time, includes the concept of coercion, in the sense of overpowering the victim's will.

This finding is supported by the temporal distinctions about causation drawn by the

judge. Until the victim got out of the truck, the judge described the victim as the cause of his own suicidal actions and reactions. This period of “self-causation” and “self-help,” which is completely consistent with his prior behavior, ended when he got out of the truck. Roy *broke that chain of self-causation by exiting the vehicle*. He took himself out of the toxic environment that it had become. This is completely consistent with his earlier attempts at suicide.

The judge found that once Roy left the truck, Carter overpowered his will and caused his death. The judge could have properly found, based on this evidence that the vulnerable, confused, mentally ill, eighteen year old victim had managed to save himself once again in the midst of his latest suicide attempt, removing himself from the truck as it filled with carbon monoxide. But then in this weakened state he was badgered back into the gas-infused truck by Carter his girlfriend and closest, if not only, confidant in this suicidal planning, the person who had been constantly pressuring him to complete their often discussed plan, fulfill his promise to her, and finally commit suicide. Then, after she convinced him to get back into the carbon monoxide filled truck, she did absolutely nothing to help him: she did not call for help or tell him to get out of the truck as she listened to him choke and die. Based on all the facts, the SJC held that there was sufficient evidence to affirm the conviction against Carter.

## **2<sup>nd</sup> Issue: Were Carter’s texts protected under the First Amendment?**

The SJC addressed whether Carter’s conviction for involuntary manslaughter violated her right to free speech under the First Amendment. The SJC reaffirmed the conclusion it had found in *Carter I* and held that no constitutional violation results from convicting a defendant of Involuntary Manslaughter for reckless and wanton, pressuring text messages and phone calls, preying upon well-known weaknesses, fears, anxieties and promises, that finally overcame the willpower to live of a mentally ill, vulnerable, young person, thereby coercing him to commit suicide. *Carter I*, 474 Mass. at 636 n.17.

The crime of involuntary manslaughter proscribes reckless or wanton conduct causing the death of another. The statute makes no reference to restricting or regulating speech, let alone speech of a particular content or viewpoint: the crime is “directed at a course of conduct, rather than speech, and the conduct it proscribes is not necessarily associated with speech. Carter cannot escape liability just because she happened to use ‘words to carry out [her] illegal [act].’” *United States v. Barnett*, 667 F.2d 835, 842 (9th Cir. 1982). Indeed, the United States Supreme Court has held that “speech or writing used as an integral part of conduct in violation of a valid criminal statute” is not protected by the *First Amendment*. *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949) (“If there is a bedrock principle underlying the *First Amendment*, it is that the government

may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable”). Nothing in *Carter I*, or earlier involuntary manslaughter cases involving verbal conduct suggested that involuntary manslaughter prosecutions could be brought in these very different contexts without raising important *First Amendment* concerns. See *Commonwealth v. Bigelow*, 475 Mass. 554, 562, (2016). (“In considering the *First Amendment*’s protective reach, critical to the examination is the context and content of the speech at issue.”). The SJC emphasized that the verbal conduct targeted here and in past Involuntary Manslaughter cases is different in kind and not degree, and raised no such concerns. Only the wanton or reckless pressuring of a person to commit suicide that overpowers that person’s will to live has been proscribed. This restriction is necessary to further the Commonwealth’s compelling interest in preserving life. The SJC found that Carter’s words contained in the text messages were not covered by the First Amendment protections.